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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,557	10/14/2003	Charles S. Taylor	GUID-005CON6	5455
89729	7590	01/12/2010	EXAMINER	
Law Office of Alan W. Cannon 942 Mesa Oak Court Sunnyvale, CA 94086				SINGH, SUNIL K
ART UNIT		PAPER NUMBER		
3732				
MAIL DATE		DELIVERY MODE		
01/12/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/684,557	TAYLOR ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sunil K. Singh	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 September 2009.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,12,13,46,53,58,190-192 and 194-222 is/are pending in the application.
- 4a) Of the above claim(s) 203-218 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,12,13,46,53,58,190-192,194-199 and 219-222 is/are rejected.
- 7) Claim(s) 200 and 201 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

This Office Action is in response to Applicant's amendments filed on 09/28/2009.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 190-192, 194-196, 198 and 202 are rejected under 35 U.S.C. 102(e) as being anticipated by Vierra et al. (US 5,749,892).

Vierra discloses a device that includes: a means for stabilizing the beating heart comprising a contact member (15,17) shapeable to engage the surface of the beating heart; wherein the contact member is hollow and made of malleable material (co. 9, line 11); wherein the contact member is capable of being inflated; a shaft member (3); wherein the contact member may comprise a flexible tube (78); wherein the contact member is capable of being bent to form a U-shaped configuration; wherein the contact member is configured for application of a vacuum; wherein the flexible tube contains a plurality of particles; and wherein a malleable member extends along at least a portion of a length of the tube.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,46,58 and 221 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vierra in view of Buckman, Jr. et al. (US 5,582,580).

Vierra discloses the invention substantially as claimed except for a device that includes a means for introducing positive/negative fluid pressure to the contact member.

Buckman teaches a device that includes a means for introducing positive/negative fluid pressure to the contact member (82) and wherein the contact member (82) is malleable (Fig. 7) (column 9, line 28-column 10, line 63). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Vierra to include a means for introducing pressure to the contact member, as taught by Buckman, in order to provide an alternate means of shaping the contact member that allows the contact member to have a plurality of different shapes. Furthermore, such means are well known in the art.

5. Claims 12,13 and 222 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vierra in view of Buckman, Jr. et al. and further in view of Koros et al. (US 6,113,534).

Vierra/Buckman discloses the invention substantially as claimed except for wherein the contact member contains a conformable material that is granular, a polymeric, or a gel.

Koros teaches a device that includes a hollow contact member (50) that contains conformable material (Fig. 10) that is a gel (col. 7, lines 59-61). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Vierra/Buckman to include a contact member containing a gel, as taught by Koros, since such a device is well known in the art.

6. Claims 53, 197, 199, 219 and 220 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vierra in view Buckman, Jr. et al. and further in view of Boyd et al. (2002/0069884).

Vierra/Buckman discloses the invention substantially as claimed except for wherein the contact member comprises a single continuous wire.

Boyd teaches a device having a contact member that comprises a single wire [0116], [0119],[0112],[0111]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Vierra/Buckman to include a contact member comprising a single wire, as taught by Boyd, since such a device is well known in the art.

***Allowable Subject Matter***

7. Claims 200 and 201 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

8. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant's arguments filed 09/28/2009 have been fully considered but they are not persuasive. Applicant argues that Vierra's contact members are flexible and made of rubber and is not malleable since they do not retain their shape. However, according to *Merriam Webster Dictionary*, the term malleable is given the definition "capable of being altered or controlled by outside forces or influences." Given this definition, it is the Examiner's position that Vierra's rubber contact members meet the limitation of the term "malleable."

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 Form.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil K. Singh whose telephone number is (571) 272-3460. The examiner can normally be reached on Monday-Friday (Increased Flex Schedule).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris L. Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

01/08/2010

/Sunil K Singh/  
Examiner, Art Unit 3732

/Cris L. Rodriguez/  
Supervisory Patent Examiner, Art Unit 3732